



**TOWN OF KITTERY**  
**CODE ENFORCEMENT OFFICE**  
200 ROGERS ROAD, KITTERY, MAINE 03904  
PHONE: (207) 475-1305  
FAX: (207) 439-6806

*Application to the*  
**BOARD OF APPEALS**

DATE SUBMITTED	
MAP & LOT	
ASA FEE	
DATE PAID	
DATE COMPLETE	
HEARING DATE	

**ADMINISTRATIVE APPEAL**

I hereby request the Board consider a Administrative Appeal as I contest the interpretation or application of ordinance / regulation, and seek relief from the decision of the Code Enforcement Officer.

I have reviewed Town Code Title 13 & Title 16, Board of Appeals By-Laws, and the Ordinance(s) pertinent to this application. My appeal is based on the following:

TITLE		CHAPTER		SECTION						PAGE	
TITLE		CHAPTER		SECTION						PAGE	

**IN ORDER FOR AN APPLICATION TO BE DETERMINED COMPLETE AND SCHEDULED FOR A PUBLIC HEARING:  
APPLICATIONS FORMS MUST BE COMPLETE; 10 SETS OF DOCUMENTATION PROVIDED; & ALL FEE(S) PAID**

**PROPERTY INFORMATION**

ADDRESS					
MAP		LOT #		LOT SIZE	
BASE ZONE(S):			OVERLAY ZONE(S):		

**The subject property:**

[ is / is not ] in a Shoreland overlay or Resource Protection zone; [ is / is not ] in a floodplain; AND  
[ does / does not ] have outstanding code violations; and, if so, granting this appeal provides resolution .

**PROPERTY OWNER: I have right, title or interest in the affected property, or issue, as shown by:**

NAME(S)					
MAILING ADDRESS					
CITY		STATE		ZIP CODE	
PHONE No.				e-MAIL:	

**NOTE:** You may have an attorney represent you, but such representation is not necessary. You may also be represented by a designated agent (e.g. family member, neighbor, engineer, contractor) as you so desire.

**APPLICANT (if different) I am an agent of the applicant with standing, OR, I am an aggrieved party in the subject property, or issue, as shown by:**

NAME(S)					
MAILING ADDRESS					
CITY		STATE		ZIP CODE	
PHONE No.				e-MAIL:	

To the best of my knowledge, all information submitted on and with this application is true and correct.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

**AFFIRMATIONS***(Please read and check all the boxes to confirm)***I understand that the Board of Appeals:**

- ☐ May hear and decide on an Administrative Appeal within the limitations set forth in Title 16, Section 6.4.1, Administrative Decision Appeal.
- ☐ Appears to have jurisdiction to hear this request; hearing must be held within 30 days of this Appeal filing; application must be complete; and, public and abutter notice must be made no less than seven days prior to the scheduled hearing.
- ☐ Role for administrative appeals is to examine and resolve problems between the Town and those affected by its ordinances, decisions or lack of action by the Town.
- ☐ Is only legally authorized to deal with issues arising from the list above, and do not include such matters as constitutionality, civil rights, criminal acts, property disputes, surliness, etc.
- ☐ Will not even hear my appeal unless I can show that I have “standing” to have my complaint heard.
- ☐ Purpose of establishing my case for “standing” is to limit appeals on an issue to those who are directly involved and/or affected.
- ☐ Will try to decide my case based only on the factual information presented and what is written in the pertinent Town ordinance/regulation, State statute(s)/regulation(s) and the rulings of the State Supreme Judicial Court.
- ☐ Tries to make decisions it believes would be upheld if appealed to Superior Court.
- ☐ Local appeals process must be exercised and exhausted before the Superior Court will hear these cases.
- ☐ Will conduct this hearing De Novo (meaning the Board acts if it were considering the question for the first time, affording no deference to the preceding agency decisions; may receive new evidence and testimony consistent with this Town Code Title 16 and the Board rules; and, conduct additional hearings and receive additional evidence and testimony).
- ☐ Will determine the Standard of Review for this appeal:

For questions of mixed law and fact, a review for “arbitrary and capricious” factors:

- 1) Was the decision/lack of action a "plain error" which led to a “brazen miscarriage of justice”?
- 2) Was the decision/lack of action made on “unreasonable grounds”, or “without any proper consideration of circumstances”?
- 3) Does any State or Federal law apply to my circumstances?
- 4) Is there any conflict between ordinances and/or statutes related to the issues?
- 5) Can the Board determine with a "definite and firm conviction” that a mistake was committed by the Town?

When questions of statutory interpretation decided in a manner that has the force of law, a “Chevron review”:

- 1) First, always, is the question whether the legislative enacting body has directly spoken to the precise question at issue.
- 2) If the intent is clear, that is the end of the matter; for the Board, as well as the Town, must give effect to the unambiguously expressed intent of the legislation.
- 3) If, however, the Board determines the enacting body has not directly addressed the precise question at issue, the Board does not simply impose its own construction on the statute. If the statute or ordinance is silent or ambiguous with respect to the specific issue, the question for the Board is whether the Town's answer is based on a permissible construction of the statute.

For questions of statutory interpretation decided in a manner that does not have the force of law, to determine the deference to be given to the Town decision based on a four-part test:

- 1) the thoroughness of the Town's investigation;
  - 2) the validity of its reasoning;
  - 3) the consistency of its interpretation over time; and
  - 4) other persuasive powers of the Town.
- ☐ Will determine my Burden of Proof:
    - 1) What does the ordinance/statute require me to prove?
    - 2) Does the ordinance/statute prohibit or limit the type of use being proposed?
    - 3) What factors must be considered under ordinance/statutes to decide whether to grant the appeal?
    - 4) Is the evidence presented substantial? Is it credible? Is it outweighed by conflicting evidence?

**STATEMENTS:**

I wish to appeal to the Board of Appeals because I have a problem in regard to a matter of Town Code Title 13, Public Services or Title 16, Land Use and Development: (*Section, Title, Page No.*)

The decision/lack of action I object to is [*Include formal documents related to the matter*]:

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What relief is requested and why should the appeal be granted?

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Unlike others in the community, I will suffer a particularized injury in this matter if not resolved in my favor. I am adversely and directly affected by:

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I object to the decision / lack of action for the following reason(s):

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**Additional Information**

1. Please complete this application in its entirety. You may add other information as may be needed to adequately describe the purpose of seeking relief from the Board of Appeals.

[Support with citations(s), of pertinent ordinance(s), deeds, maps, documents, etc. Describe in detail what decision you are appealing; the date on which the decision was made; and, by whom, the facts surrounding this appeal, what you think is wrong about the decision which you are appealing, and what action you want the Board of Appeals to take in this matter. Also, please indicate how that Board's decision will affect you and/or your property. Use extra sheets if necessary and attach them to this application.]

2. A detailed plot plan or diagram must be provided showing dimensions and shape of the lot, the size and locations of existing buildings, the locations and dimensions of proposed buildings or alterations, and any natural or topographic features (wetlands, streams, etc) of the lot in question. This plot plan should also include the distances to the nearest structures on abutting properties and show the detail of any rights-of-way, easements, or other encumbrances.

3. Blueprints, surveys, photos and other documents may be helpful in explaining your request and should be included.